

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: LIBOR-BASED FINANCIAL
INSTRUMENTS ANTITRUST LITIGATION

1:11-md-02262-NRB

THIS DOCUMENT RELATES TO:

ALL CASES

[PROPOSED] SCHEDULING ORDER

	Event	Deadline	Calendar estimate
1.	All previously stayed cases (with the exception of the protective actions filed by certain Direct Action Plaintiffs) are unstayed	On entry of the Scheduling Order, ECF No. 3414 (the “Scheduling Order”)	June 17, 2022
2.	Plaintiffs to propound discovery requests relating to the alleged suppression of LIBOR and/or any conspiracy to suppress LIBOR (the “Upstream Issues”) in actions that have survived a motion to dismiss, and discovery requests with respect to class certification in the OTC action (“Discovery Requests”) ¹ Applicable Defendants, to the extent they have not done so already, produce custodians/search terms used for documents produced to regulators that were previously produced to class plaintiffs	14 days after entry of the Scheduling Order	July 1, 2022

¹ The parties reserve their respective rights to propound additional discovery requests after this date and to object to any such discovery requests. Absent agreement of the parties or leave of the Court, no party may serve individual (non-coordinated) discovery requests. Defendants’ participation in these proceedings shall not constitute a waiver of any defenses or objections, including, without limitation, personal jurisdiction, venue, or that sufficient document discovery has already been provided. It is the BBA Defendants’ position that any discovery to or from the BBA Defendants should remain stayed pending resolution of any motions to dismiss filed by the BBA Defendants and any disputes as to whether there are live claims against the BBA in the MDL, which the BBA Defendants respectfully request that the Court so order. Plaintiffs contend discovery should promptly go forward on Upstream Issues without delay.

	Event	Deadline	Calendar estimate
3.	Deadline for Defendants to serve initial disclosures concerning the Upstream Issues pursuant to Federal Rule of Civil Procedure 26 (to the extent they have not done so already)	21 days after entry of the Scheduling Order	July 8, 2022
4.	Deadline for Plaintiffs to provide Defendants with a copy of any proposed amended complaint that they intend to file as of right or seek leave to file	45 days after entry of the Scheduling Order	August 1, 2022
5.	Deadline for Defendants to propose custodians and search terms for their own documents responsive to Discovery Requests ²	30 days after service of Discovery Requests	August 1, 2022
6.	Deadline to agree or file pre-motion letters on ESI protocol ³	45 days after service of Discovery Requests	August 15, 2022

² Notwithstanding the inclusion of document discovery procedures in this Scheduling Order, Defendants expressly reserve the right to object to document or other discovery on any grounds, including but not limited to objecting that sufficient discovery has already been provided.

³ The parties shall also meet and confer about the format and content of privilege logs, if any, with the objective of developing an efficient process for identifying any claims of privilege asserted by the parties.

	Event	Deadline	Calendar estimate
7.	Deadline for parties to jointly submit a memorialization to the Court of the plaintiffs' claims that the parties believe to be live or that are in dispute as to each defendant in all actions in the MDL (the "Joint Memorialization") ⁴ Deadline to amend for Plaintiffs with amendment as of right or to file pre-motion letters seeking leave to amend, including to add or drop parties. Pre-motion letters seeking leave to amend shall be accompanied by proposed amended complaints ⁵	60 days after entry of the Scheduling Order (or subject to any other agreed-upon or Court-ordered schedule for resolution of such disputes)	August 16, 2022
8.	Deadline for parties to inform the Court of any substantive disputes regarding the viability of cases/parties/claims, and seek the Court's guidance as to next steps ⁶	14 days after filing of the Joint Memorialization (or subject to any other agreed-upon or Court-ordered schedule for resolution of such disputes)	August 30, 2022

⁴ Other than with respect to the stayed Direct Action Plaintiff protective actions, the parties will meet and confer in an effort to agree upon the effect of the Second Circuit's decisions in *Schwab II* and *Berkshire Bank*, and this Court's prior decisions in this MDL, on the claims remaining in this MDL (to the extent the parties did not already do so previously). With the exception of the BBA Defendants, the parties agree that this meet-and-confer process will occur alongside all other issues in the pretrial schedule and shall not be used as a basis to avoid producing discovery materials to any DAP or to otherwise seek to delay any of the pretrial milestones set forth in the proposed pretrial schedule, provided that no plaintiff in any previously stayed putative class action or the *Axiom* plaintiffs, *see No. 15-cv-2973* (S.D.N.Y.), or the *Cicchini* plaintiffs, *see No. 15-cv-4810* (S.D.N.Y.), shall be entitled to any discovery unless their claims have survived a motion to dismiss.

⁵ For the avoidance of doubt, the parties reserve their respective rights as to whether any further amendments to the complaints in the MDL are appropriate, and they reserve their respective rights as to whether and, if so, when parties may move the Court pursuant to Federal Rule of Civil Procedure 12(c), and/or seek leave to file any other motion or modify this schedule in any other respect. Foreign Defendants also reserve the right to request a pre-trial evidentiary hearing on personal jurisdiction over the Foreign Defendants. Plaintiffs oppose any such request.

⁶ In addition, with respect to any previously stayed putative class action in the MDL, as well as the *Axiom* action, No. 15-cv-2973, which Defendants have not yet moved to dismiss, in the event that the Plaintiffs in those actions believe that any of their claims remain live, Defendants will file pre-motion letters to dismiss or for other relief as appropriate in those actions.

	Event	Deadline	Calendar estimate
9.	Deadline to agree or for Plaintiffs to move to compel on custodians and search terms with respect to Upstream Issues and class certification in the OTC action Deadline to agree or for parties to move to compel on deposition protocol	60 days after service of Discovery Requests	August 30, 2022
10.	Deadline for answers in each action, to the extent any Defendant is not dismissed from that action, does not have a 12(b) motion (including pre-motion letters) pending in that action, and has not previously filed an answer in that action ⁷	For each action, 60 days after the later of (i) the filing of the Joint Memorialization (if the parties in that action are in full agreement) or (ii) the resolution of all 12(b) motions and motions to amend (including pre-motion letters) in that action without further leave to amend	Est. Fall 2022
11.	Deadline for substantial completion of production of Defendants' relevant electronic transactional data, if any, including data regarding purchase/sales of LIBOR-based instruments, and Defendants' interbank borrowing data (to the extent not already produced)	150 days after service of Discovery Requests	November 28, 2022
12.	Deadline for substantial completion of Defendants' rolling production of all document discovery relating to the Upstream Issues and class certification in the OTC action ⁸	150 days after later of (i) deadline for agreement on custodians and search terms if agreement is reached; or (ii) any motions to compel on custodians and search terms are resolved	January 27, 2023

⁷ Any Defendant that has answered or answers subsequent to the entry of this Order in the OTC action (*Mayor & City Council of Baltimore et al. v. Credit Suisse AG et al.*, No. 11-cv-5450-NRB), the Exchange-Based action (*Metzler Investment GmbH v. Bank of America, N.A.*, No. 11-cv-2613-NRB), the FDIC action (*Fed. Deposit Ins. Corp. as Received for Amcore Bank, N.A. et al. v. Bank of Am. Corp. et al.*, No. 14-cv-1757-NRB), or Freddie Mac action (*Fed. Home Loan Mortg. Corp. v. Bank of Am. Corp. et al.*, No. 13-cv-3952-NRB) may, in answering an individual allegation in other actions in this MDL, cross-reference in its entirety its answer in the OTC, Exchange-Based, FDIC or Freddie Mac action in the form "See Answer in __ [MDL action]" in response to the allegation.

⁸ Plaintiffs are informed that Defendants will use their reasonable efforts to make rolling productions of electronic and transactional data, as applicable, so that those materials are not all served on the deadline. If rolling productions are not provided by one or more Defendants, Plaintiffs reserve their right to raise

	Event	Deadline	Calendar estimate
13.	Deadline for service of privilege logs, if any, concerning the Upstream Issues and class certification in the OTC action ⁹	30 days after deadline for substantial completion of all document discovery concerning the Upstream Issues Amended privilege logs will be served within 30 days of any subsequent production	February 27, 2023
14.	Deadline to serve Hague requests to obtain testimony abroad concerning the Upstream Issues or class certification in the OTC action ¹⁰	45 days after deadline for substantial completion of all document discovery concerning the Upstream Issues	March 13, 2023
15.	Deadline for parties to propound interrogatories and RFAs concerning the Upstream Issues or class certification in the OTC action	75 days before close of fact discovery concerning the Upstream Issues	June 12, 2023
16.	Deadline to notice fact depositions concerning the Upstream Issues or class certification in the OTC action	60 days before close of fact discovery concerning the Upstream Issues	June 26, 2023
17.	Close of fact discovery (including depositions) concerning the Upstream Issues and class certification in the OTC action	210 days after deadline for substantial completion of document productions concerning the Upstream Issues and class certification in the OTC action	August 25, 2023

this matter with the Court.

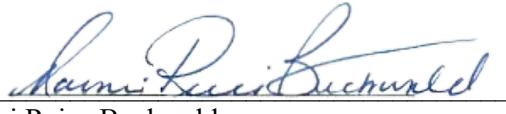
⁹ Defendants reserve the right to object to the production of privilege logs in connection with any regulatory productions.

¹⁰ If a party moves the Court for issuance of a Hague Request to take testimony abroad by the “Deadline to serve Hague requests to obtain testimony abroad concerning the Upstream Issues” above, but the relevant foreign tribunal has not issued a final, non-appealable order by 45 days before the “Close of fact discovery (including depositions) concerning the Upstream Issues” deadline, such deposition(s) may be taken after that deadline upon a showing of good cause. Good cause shall include, but will not be limited to, reasonably diligent efforts to take the requested deposition that have not resulted in a ruling from the relevant foreign tribunal.

	Event	Deadline	Calendar estimate
18.	Deadline for parties to serve opening expert reports concerning the Upstream Issues and OTC class certification	30 days after close of fact discovery concerning the Upstream Issues and in the OTC action	September 25, 2023
19.	Deadline for parties to serve rebuttal expert reports concerning the Upstream Issues and OTC class certification	75 days after opening expert report	December 11, 2023
20.	Deadline for parties to serve reply expert reports	75 days after rebuttal expert report	February 26, 2024
21.	Close of expert discovery (including depositions) concerning the Upstream Issues and class certification in the OTC action	30 days after reply expert report	March 27, 2024
22.	Deadline to file summary judgment motions on the Upstream Issues Deadline for Plaintiffs to file motion to certify the OTC class with respect to the Foreign Defendants Deadline to file motions to exclude experts concerning the Upstream Issues and OTC class certification	30 days after close of expert discovery concerning the Upstream Issues and class certification in the OTC action	April 26, 2024
23.	Deadline to file summary judgment opposition briefs on the Upstream Issues Deadline for Defendants to file oppositions to motion to certify the OTC class with respect to the Foreign Defendants and to file motion to decertify the OTC class with respect to Bank of America and JPMorgan Deadline to file oppositions to motions to exclude experts concerning the Upstream Issues and OTC class certification	60 days after opening motion	June 25, 2024

	Event	Deadline	Calendar estimate
24.	<p>Deadline to file reply briefs in support of summary judgment motions on the Upstream Issues</p> <p>Deadline for Plaintiffs to file reply brief in support of motion to certify the OTC class with respect to the Foreign Defendants, and opposition to motion to decertify the OTC class with respect to Bank of America and JPMorgan</p> <p>Deadline to file reply briefs in support of motions to exclude experts concerning the Upstream Issues and OTC class certification</p>	45 days after opposition	August 9, 2024
25.	Deadline for parties to meet and confer and submit agreed-upon or alternative schedules regarding whether Plaintiffs suffered injury as a result of alleged LIBOR suppression, Plaintiffs' notice of and reliance on an allegedly inaccurate LIBOR, and any other remaining issues (the "Downstream Issues"), and regarding any remaining expert discovery and briefing	30 days after motions on Upstream Issues are decided	Est. Fall 2024

SO ORDERED.



Naomi Reice Buchwald
United States District Judge